

Appl. No. 10/815,305
Amdt. dated December 8, 2006
Response to the Office Action of September 11, 2006

REMARKS

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Claims 13-54 are pending in this application. Claims 13-54 are rejected in the Office action mailed September 11, 2006. In view of the Remarks made herein, Applicants respectfully request reconsideration of these rejections and allowance of claims 13-54.

Claims 13-54 are rejected under 35 U.S.C. § 102(e) as anticipated by O'Sullivan *et al.* (U.S. Pat. No. 7,037,538, hereinafter referred to as "O'Sullivan"). Applicants respectfully disagree. To anticipate a claim, the reference must teach every element of the claim. (MPEP § 2131). Nowhere does O'Sullivan teach injecting a lipid-based mixture into a filling for yogurt. Applicants specifically refer to this filling in claims 13-22, 24, 26-31, 33, 34, 38-47, 50 and 51. Moreover, the step of injecting the lipid-based inclusion is recited in every independent claim. O'Sullivan does not teach injecting a lipid-based mixture into a filling for yogurt. O'Sullivan is directed to injecting a lipid-based mixture directly into yogurt. See, O'Sullivan column 2, lines 34-44; column 6, lines 15-26; column 7, lines 37-45; column 7, line 55-column 8, line 6; and claims 1, 2, 7, and 8. Applicants in their specification specifically contrast their claimed method with adding a lipid-based mixture directly to yogurt. See, *e.g.*, paragraph 15 of Applicants' specification:

[0015] There are additional issues involved with just adding chocolate pieces directly to the yogurt. Methods that have been used to add aseptic chocolate to yogurt have required the chocolate first to be sterilized at a high temperature, and then be maintained in an aseptic environment from the time of sterilization to the time the chocolate is added to the yogurt. The process to accomplish this, however, is complex and the equipment cost is prohibitive.

Because O'Sullivan does not teach every element of independent claims 13, 27, and 38, Applicants respectfully submit that rejection of claims 13-54 under 102(e) over O'Sullivan is improper. Applicants respectfully request withdrawal of this rejection.

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In view of the remarks made herein, Applicants respectfully submit that claims 13-54 are patentable over the cited reference. Reconsideration and allowance of those claims is appropriate and is respectfully requested.

Respectfully submitted,

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